

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No: 07-cv-6491 (WHP)

CHLOE, S.A.S., J.CHOO LIMITED

Plaintiffs

ANSWER

-against-

KEN CHEN a/k/a/ SHU CHEN A/K/A XIANG CHEN
et. al.

Defendants

The Defendant YAN HE XIA, in answering the complaint of the plaintiffs' pleas as follows:

- 1) This answering defendant denies paragraphs numbered:
27,62,63,64,65,66,67,68,69,70,71,72,73,74,75,76,77,78,79,80,81,82,83,84,85,86,87,88,89
,90,91,92,93,94,95,96,97,98,99,100,101,102,103,104,105,106,107,108,109,110,111,112,1
13,114,115,116,117,118,119,120,121,122,123,124,125,126,127,128,129,130,131,132,133
,134.
- 2) This answering defendant denies possessing knowledge and/or information sufficient to
forma belief as to the truth or falsity of paragraphs numbered:
1,2,,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,28,29,30,31,32,33,
34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58,59,60,61.
- 3) This answering defendant denies each and every paragraph, allegation , fact, cause of
action, or assertion not specifically admitted above.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

- 4) The court lacks jurisdiction over this answering Defendant due to the improper service of
process of the summons and complaint. Upon an inspection of file backs , no affidavit of
service has been presented to the within court.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

- 5) These plaintiffs may not bring state law causes of action in the State of New York, under
any theory of diversity, as these plaintiffs' are not authorized to perform and or otherwise
conduct business in the State of New York.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

- 6) The alleged trade marks of “Chloe” are invalid.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

- 7) These plaintiff’s do not own rights to the trade mark “Chloe”

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

- 8) “Chloe” is a Greek mythical figure, referenced in works at least since 1559. It is so ancient , used, in the public domain (see Dauphins and Chloe, M. Ravel 1912) that is incapable of being properly trademarked.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

- 9) Plaintiffs suffered no damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

- 10) The merchandise in question was not placed for sale, owed, or controlled by the Defendant.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

- 11) That the merchandise in question was allegedly first observed by plaintiff when the possession of the premises was exclusively under the custody and control of the agents of the plaintiffs’.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

- 12) That during the “raids” upon the premises of the defendants’ herein, no steps, and or inadequate steps were taken to assure that property of other shops was not moved into this answering Defendant’s shop.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

- 13) Latches

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

- 14) Res judicata

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

- 15) Failure to properly trademark the allegedly offended Mark.

Wherefore may this honorable court dismiss the complaint against this answering Defendant and for such other and further relief as to which this honorable court deems just and proper.

_____/s/_____
Mark P. Getzoni, Esq.
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Dated: September 6th, 2007